IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 23664 of 2007(P)

PETITIONER:

CHACKO MATHAI, AGED 56,
S/O. MATHAI CHAKO,
PADINJAREKKALYIL,
VELLASSERY,KADUTHURUTHY.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.
SRI.JOBI.A.THAMPI
SRI.M.KABANI DINESH

RESPONDENTS:

1. **KADUTHURUTHY GRAMA PANCHAYAT**
   REPRESENTED BY ITS SECRETARY,
   KADUTHURUTHY.

2. **ASSISTANT ENGINEER,(IRRIGATION)**
   OFFICE OF THE ASSISTANT ENGINEER,
   WATER RESOURCES DEPARTMENT,
   KADUTHURUTHY.

3. **ASSISTANT EXECUTIVE ENGINEER,(IRRIGATION**
   OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,
   WATER RESOURCES DEPARTMENT,KADUTHURUTHY.

4. **STATE OF KERALA REPRESENTED BY SECRETARY**
   TO GOVERNMENT, LOCAL SELF-GOVERNMENT
   DEPARTMENT,SECRETARIAT,TRIVANDRUM.

R1 BY ADV. SRI.M.V.BOSE
BY GOVERNMENT PLEADER SRI. K.J. MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE SALE DEED NO.2964/98 DTD. 29/12/1998.**
EXT.P2:	**COPY OF THE NO OBJECTION CERTIFICATE DTD.7/07/2006 FROM THE 1ST RESPONDENT.**
EXT.P3:	**COPY OF THE NOTICE DTD. 1/08/2006 ISSUED BY THE 2ND RESPONDENT.**
EXT.P4:	**COPY OF THE REPLY LETTER DTD. 5/08/2006 SUBMITTED BY THE PETITIONER TO EXT.P3.**
EXT.P5:	**COPY OF THE NOTICE DTD. 6/10/2006 FROM THE VILLAGE OFFICE, KADUTHURUTHY.**
EXT.P6:	**COPY OF THE PETITION DTD. 19/10/2006 SUBMITTED AN APPLICATION BEFORE THE DISTRICT COLLECTOR, KOTTAYAM.**
EXT.P7:	**COPY OF THE REPORT OF THE TALUK SURVEYOR.**
EXT.P7(A):	**COPY OF THE LETTER DTD. 1/11/2006 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.**
EXT.P8:	**COPY OF THE LETTER DTD. 1/12/06 FROM THE ADDITIONAL TAHSILDAR, VAIKOM TO THE 3RD RESPONDENT.**
EXT.P8(A):	**COPY OF THE SKETCH ALONG WITH EXT.P8.**
EXT.P9:	**COPY OF THE REPORT DTD. 16/07/2007 FROM THE JILLA SURVEY SUPDT. TO THE TAHSILDAR, VAIKOM.**
EXT.P10:	**COPY OF THE NOTICE DTD. 21/07/2007 FROM THE 1ST RESPONDENT TO THE PETITIONER.**
EXT.P11:	**COPY OF THE NOTICE DTD. 11/07/2007 FROM THE 1ST RESPONDENT.**
EXT.P12:	**COPY OF THE APPLICATION DTD. 25/07/07 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
EXT.P12(A):	**COPY OF THE RECEIPT DTD. 26/07/2007 ISSUED BY THE 1ST RESPONDENT.**

WPC.NO.23664/2007 P

EXT.P13: COPY OF THE NOTIFICATION DTD. 6/06/2007.

EXT.P14: COPY OF THE CIRCULAR DTD. 25/07/2007.

EXT.P15: COPY OF THE CIRCULAR NO.24136/RA1/07/LSF DTD. 20/06/2007 ISSUED BY GOVERNMENT.

1ST RESPONDENT'S EXHIBIT:

EXT.R1(A): COPY OF THE COMPLAINT DTD. 21/07/2007.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 23664 of 2007

Dated this the 20th day of November , 2007

JUDGMENT

The petitioner, who is an Ex-service man, presently employed at Vienna in Europe, has filed this writ petition seeking to quash Ext.P10 notice issued by the first respondent – Kaduthuruthy Grama Panchayat restraining him from continuing with the construction of a commercial building on his property covered by Ext.P1 document of title. The petitioner also seeks a declaration that the Government Order G.O.(Rt) 150/2007 LSF dated 6.6.2007 referred to in Ext.P10 i.e. the Government Order by which the provisions of the Kerala Municipality Building Rules were extended to the Panchayat ares in the State is not applicable to the building which is being constructed by him. The petitioner also prays for a direction to the first respondent Panchayat to allow the petitioner to proceed with the construction. Ext.P1 is a copy of the title document which would show that the petitioner has absolute title and possession over 8 cents of land in Survey No.30/1-2 of the Kaduthuruthy Village. Based on Ext.P1, the petitioner approached the first respondent Panchayat for permission to construct a commercial building in the said plot and the Panchayat issued the petitioner with Ext.P2 No Objection Certificate. Under

Ext.P2, the petitioner is given permission to construct building without violating the Rule 220(b) of the Kerala Panchayat Raj Act. The petitioner started construction of the building after collecting necessary building materials and while the work was in progress on 1.8.2006, the petitioner was issued with Ext.P3 stop memo. In Ext.P3, Circular No.6/993/96 dated 13.2.1996 of the District Collector is referred to and the petitioner is directed to stop the construction until the boundaries of the property are fixed on the basis of a measurement by a competent survey officials. The petitioner claims that on receiving Ext.P3, he got the property measured by the Taluk Surveyor and enclosing the site plan prepared by the Taluk Surveyor, Ext.P4 request was sent by the petitioner to the 2nd respondent – Assistant Engineer (Irrigation) seeking permission to continue with the construction of the building after leaving the set back of 1.5 meters away from the side of the thodu puramboke and 3.90 meters from the margin of th PWD road viz. Ernakulam - Ettumanoor State Highway. In spite of Ext.P4, the 2nd respondent did not send any reply to the petitioner. But while so, the 3rd respondent -Assistant Executive Engineer (Irrigation) issued a letter to the petitioner directing the petitioner to stop the construction till the puramboke was got measured by the Revenue Authorities. While so, the petitioner

received Ext.P5 notice from the local village officer. In Ext.P5, the petitioner has been directed to stop the construction till such time as the thodu puramboke (allegedly included in the petitioner's property) is identified through a proper measurement. In Ext.P5, the petitioner is also directed to appear before the RDO, Pala and to produce relevant documents. The petitioner submits that as directed in Ext.P5 all relevant documents were produced by him before the RDO, Pala. It is pointed out that the RDO, Pala has not issued any orders restraining the petitioner from proceeding with the construction. In deference to Ext.P5, the petitioner applied to the Tahsildar to facilitate measurement of the property and demarcation of the boundaries for confirming that in his property no puramboke has been included. Pursuant to that application, the petitioner submitted Ext.P6 representation before the District Collector for expediting the matter. Thereafter, the Taluk Surveyor measured the property again and found that all the constructions which have been taken up by the petitioner are within the property covered by the pattayam in his favour. Ext.P7 is the plan prepared by the Taluk Surveyor and Ext.P7(a) is the letter by which Ext.P7 was forwarded by the petitioner to the 2nd respondent. In spite of Exts.P7 and P7(a), the 2nd respondent did not be inclined to grant permission to the petitioner for proceeding with

the construction. Perhaps, the 2nd respondent's stand was that Ext.P7 does not specifically show the extent of the puramboke in the area. Noticing the above attitude of the 2nd respondent, the property was again got measured by the Taluk Surveyor, who prepared a fresh sketch showing PWD road puramboke and thodu puramboke separately. Ext.P8 and P8(a) is the sketch prepared by the Taluk Surveyor in the above measurement and Ext.P8 is a forwarding letter by which Ext.P8(a) was forwarded to the 3rd respondent Assistant Executive Engineer. Finding that in spite of Ext.P8(a), the authorities were not inclined to permit the petitioner to continue with the construction work, the petitioner had the property measured again by the District Superintendent of Survey. In fact the District Superintendent of Survey who got the property measured by the Head Surveyor. In that measurement, it was found that the petitioner's construction do not encroach puramboke either road or thodu. Accordingly, the District Superintendent of Survey issued Ext.P9 report to the Tahsildar reporting clearly that the construction effected by the petitioner are all upon his pattayam land only. On receiving Ext.P9, the petitioner made arrangements to proceed with the constructions of his building. But at that juncture, the Panchayat issued Ext.P10 notice dated 21.7.2007. In Ext.P10 reference is made

to Government Order G.O.(MS) No.150/2007 LSGD dated 6.6.2006, wherein the Kerala Municipality Building Rules have been extendned to the Panchayat with effect from 6.6.2007 and the petitioner is directed to continue with the construction only after obtaining permission from the Panchayat in terms of the Kerala Municipality Building Rules. The petitioner submits that the Kerala Municipality Building Rules cannot have application to his building, construction of which was commenced atleast one year prior to the introduction of the Kerala Municipality Building Rules in the first respondent Panchayat. For avoiding further delay, the petitioner submitted Ext.P12 application after remitting requisite fees against Ext.P12(a) receipt for building permit. It is pointed out that no formal orders have been passed on Ext.P12 by the Panchayat so far. On the above averments, the petitioner raises grounds A to f and has filed this writ petition seeking the reliefs already indicated.

2. The respondent Panchayat has filed a detailed counter affidavit wherein various factual averments in the writ petition are virtually admitted to a considerable extent. It is claimed that the Panchayath never wanted to harass the petitioner. The residents of the locality submitted Ext.R1(a) complaint dated 21-7-2007 and it was in the wake of Ext.R1(a) that Ext.P10 was issued by the Secretary

of the Panchayat to the petitioner. In Ext.P1 notice issued by the Panchayat it was stated that information regarding buildings construction which is completed by 1-3-2007 or are undergoing construction should be submitted to the Panchayath. The construction of this particular building was not going on, since it was stopped in August 2007 itself pursuant to Ext.P3. Paragraph 1 of Ext.P11 is referred to and it is submitted that vide notification dated 6-6-2007 the provisions of the Kerala Municipalities Building Rules have been made applicable to all the Panchayaths and that Ext.P10 was issued noticing the petitioner's own admission that construction was not going on at that time. The submission of Ext.P12 application along with Ext.P12(a) is admitted. But it is submitted that though the petitioner is directed to get NOC from the Assistant Engineer, nothing was heard from him thereafter. Moreover no action could have been taken on Ext.P12 since in the meanwhile this writ petition was filed on 1-8-2007. It is reiterated that the Panchayat has no intention whatsoever to harass the petitioner, but was only acting on the basis of Circular No.24136/RA1/07/LSGD dated 20-6-2007. It is contended that G.O.MS.No.150/2007/LSGD dated d6-6-2007 does not confer any special benefit on the petitioner to continue with the construction. It is however pointed out that the Government has issued another

circular dated 25-7-2007 relaxing the earlier circular. It is for the petitioner to avail the benefit of that circular.

3. A counter affidavit has been filed by the 2nd respondent Assistant Engineer Irrigation wherein the allegations of harassment and mala fide intentions on the part of that respondent are denied. It is stated that as a responsible officer it is the duty of the 2nd respondent to see that any encroachment of canal puramboke land is not made. Steps are taken by the respondent to prevent the petitioner from constructing the building in the encroached property. It is further submitted that the Government of Kerala have a proposal under the aid of Central Government to improve the Apanchira canal starting very near to the construction site of the petitioner. Sufficient width is required to improve the canal to arrest flooding and easy movements of boats. The Apanchira canal is a leading canal to Vembanad lake and the canal is now non-navigable due to situation, water hyacinth growth and bank erosion. The people in the area have stopped cultivation in many of the padasekharams due to lack of transport facility. There are no roads to approach these padasekharam and they were depending only on water transporting. The canal needs thorough revamping to bring it to navigable conditions. By improving the width of canal, the tourism can also be

promoted. The petitioner is constructing the shopping complex very near to the feeder canal. For the purpose of widening and improving the canal, sufficient clearance is necessitated at least five metres from the boundary of the canal as in the case of State Highways.

4. To the counter affidavit, a detailed reply affidavit has been filed. Reiterating the petitioners stand. Smt.Molly Jacob, counsel for the petitioner and Sri. M.V.Bose, counsel for the Panchayat and the learned Government Pleader Mr. K.J.Mohammed Anzar addressed me extensively. Insistence of the 2nd respondent that a distance of 5 metres should be left out from the edge of Apanchira canal while the petitioner carries out construction does not appear to have any statutory basis, as things obtain now. The Apanchira canal does not come within the purview of the notification issued by the Central Government under Section 3 of the Environmental Protection Act and the area does not come within the purview of the Coastal Zone Management Plan. Therefore, the contentions raised by the 2nd respondent in my opinion are not relevant. The question is whether there is any material to hold that the constructions put up by the petitioner are on puramboke? The measurement reveals that the constructions are on the patta property of the petitioner. Exts.P7 and P7(a), Exts.P8 and P8(a) and Ext. P9 are based on measurements

conducted by competent and senior surveyors of the Government and there is no reason to suspect the correctness. Therefore, the petitioner ought to be permitted to continue the construction subject to Exts.P14 and P15.

5. The writ petition therefore will stand allowed permitting the petitioner to continue with the construction subject to Exts.P14 and P15. The Secretary of the Panchayat shall ensure that the conditions in Clause 7 of paragraph 2 of Ext.P15 are complied with by the petitioner. Once it is reported to the Panchayat that the construction is completed that the Panchayat shall conduct inspection and if such inspection reveals that the conditions of Clause 7 of paragraph 2 of Ext.P15 circular have been satisfactorily complied with by the petitioner. The Panchayat will issue completion certificate and assign door number to the building and thereby enable the petitioner to get utility connection in the building. No costs.

PIUS C. KURIAKOSE,
JUDGE.

Dpk/ks.